

Internal Revenue Service
memorandum

CC:TL-N-1938-86

Brl:RALockyear

date: **APR 24 1986**

to: Regional Counsel, Southeast Region CC:SE
Attn: Roy L. Allison, Deputy Regional Counsel (TL)

from: Director, Tax Litigation Division CC:TL

subject: Partnership: TEFRA Partnership Matters -
Power of Attorney

This is in response to your request for our views regarding an advisory opinion from District Counsel, Greensboro, to the District Director, Greensboro, dated January 8, 1986. Said opinion supplemented an earlier advisory opinion between the same parties which was dated November 18, 1985.

ISSUES:

1. May the Tax Matters Partner of a TEFRA Partnership designate an attorney-in-fact to represent the partnership before the Internal Revenue Service and, if so, what authority may be so delegated. RIRA Nos. 6231.00-00; 6223.00-00; 6224.00-00; 6226.00-00; 6227.00-00; and 6229.00-00.

2. Is the Form 2848, Power of Attorney and Declaration of Representative, adequate in its present form to enable the Tax Matters Partner to appoint an attorney-in-fact. RIRA Nos. 6223.00-00; 6224.00-00; 6226.00-00; 6227.00-00; 6229.00-00; and 6231.00-00.

CONCLUSIONS:

1. A Tax Matters Partner may appoint an attorney-in-fact to represent the partnership before the Internal Revenue Service and to perform all acts for the partnership except for the execution of legally significant documents. The term legally significant document includes, but is not limited to, settlement agreements which bind non-notice partners pursuant to I.R.C. §6224(c)(3) and consents to extend the statute of limitations period for assessment with respect to the partnership pursuant to I.R.C. §6226(b)(1)(B).

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2. The Form 2848, Power of Attorney and Declaration of Representative is adequate in its present form to enable the Tax Matters Partner of a TEFRA Partnership to appoint an attorney-in-fact.^{1/}

DISCUSSION:

The Tax Equity and Fiscal Responsibility Act of 1982 (hereinafter TEFRA), Pub. L. No. 97-248, §402(a), as codified at I.R.C. §§6221 through 6233,^{2/} provides for the treatment of partnership items at the partnership level in a unified partnership proceeding rather than in separate proceedings with each partner.

I.R.C. §6231(a)(7) provides for the designation of a general partner of the partnership to be the Tax Matters Partner (hereinafter TMP). The TMP is authorized to deal with the Internal Revenue Service regarding various aspects of the partnership proceeding. I.R.C. §§6221 through 6233 authorize or require the TMP to do the following:

1. To be entitled to receive a notice of beginning of administrative proceeding and a notice of final partnership administrative adjustment (I.R.C. §6223(a));
2. To keep each partner informed of all administrative and judicial proceedings (I.R.C. §6223(g));
3. To enter into a settlement agreement and to bind non-notice partners to said agreement (I.R.C. §6224(c)(3));
4. To petition the Tax Court, the Claims Court, or the appropriate U.S. District Court within 90 days after a notice of final partnership administrative adjustment is mailed to the TMP (I.R.C. §6226(a));
5. To intervene in any action brought under I.R.C. §6226(b) by a partner other than the TMP (I.R.C. §6226(b));

^{1/} The original memoranda of District Counsel, Greensboro, dealt with five issues. We have attempted to cover all of the issues raised within the parameters of the two issues discussed herein.

^{2/} I.R.C. §6233 was added by Pub. L. No. 98-369, §714(p)(1), effective for partnership taxable years beginning after September 3, 1982.

6. To make an administrative adjustment request on behalf of the partnership (I.R.C. §6227(b));
7. To petition the Tax Court, the Claims Court or the appropriate U.S. District Court under the provisions of I.R.C. §6228 (I.R.C. §6228(a)(1));
8. To extend the 2-year period for filing a petition under I.R.C. §6228 following the filing of a request under I.R.C. §6227 (I.R.C. §6228(a)(2)(D));
9. To appeal from a judicial determination under either I.R.C. §6226 or §6228 (I.R.C. §6226(f) and §6228(a)(6));
10. To extend by agreement the period of limitations for making assessments with respect to partnership items (I.R.C. §6229(b)(1)(B)); and
11. To furnish the name, address, profits interest, and taxpayer identification number (TIN) of each partner in the partnership to the Internal Revenue Service (I.R.C. §6230(e)).3/

Inasmuch as the designated TMP is authorized to perform the above-enumerated duties for the TEFRA partnership, it is clear that either the TMP or the partnership itself may wish to appoint an attorney-in-fact to act for the TMP. At issue is whether said attorney-in-fact can bind the partnership or partners with respect to actions that would have binding effect if performed by the TMP.

Subpart E of Part 601 of Title 26 Code of Federal Regulations details the Internal Revenue Service's procedural rules for conference and practice requirements. Treas. Reg. §601.502(c) provides that a power of attorney in proper form, executed by the taxpayer, will be required when the representative desires to perform one or more of the following enumerated acts on behalf of the taxpayer:

- 1). Receipt of a refund check;
- 2). Execution of a waiver or offer of a waiver of restriction on assessment or collection, or waiver of notice of disallowance of a claim for credit or refund;

3/ This list of responsibilities and rights of the TMP is not intended to be exclusive.

- 3). Execution of a consent to extend the statutory period for assessment or collection of tax; or
- 4). Execution of a closing agreement under I.R.C. §7121.

The regulation goes on to state that a Form 2848 will be sufficient to meet the requirements of a power of attorney except as to the receipt of a refund check. In the case of a refund check the right must be specifically granted in the document.

Treas. Reg. §601.504(b)(1)(iii) states as follows:

- (b) Execution of a power of attorney or a tax information authorization - (1) Ordinary cases. A power of attorney or a tax information authorization must be executed as follows:
- (i) . . .
 - (ii). . .
 - (iii) Partnership. In the case of a partnership, by all members, or if executed in the name of the partnership, by one of the partners duly authorized to act for the partnership.

Inasmuch as the TMP is "duly authorized to act for the partnership" it follows that his designated representative should be able to bind the partnership or the partners to the extent the TMP himself could so act. This includes the execution of settlement agreements (including formal closing agreements), and the execution of an agreement extending the statute of limitations for assessment with respect to the partnership. In addition, the Form 2848 specifically provides that a partner (TMP) who signs the power of attorney certifies that he has the authority to execute the power on behalf of the "taxpayer." Where the Internal Revenue Service enters into negotiations with a representative who has been given a power-of-attorney from the TMP in his capacity as TMP of the partnership, the Internal Revenue Service should be able to rely on documents executed by said representative including settlement agreements and statute extensions. Said cases should be defended by Chief Counsel in the event that the partners or the partnership later argue that said representative lacked the authority to so act.

This matter should specifically be dealt with in procedural regulations or by way of a revenue procedure. Until such time as said regulations or procedures are promulgated we recommend that the Internal Revenue Service have all legally significant documents executed personally by the TMP rather than his attorney-in-fact. The reason for this conservative approach is that the TMP is a creature of statute. His right to act in significant areas that may bind partners potentially to their

detriment flows from said statutory authority rather than from the partnership itself. Although the partnership may "designate" a TMP to act for the partnership such "designation" may be limited to those rights and duties specifically set forth in I.R.C. §§6221-6233 and may not encompass the specific authority to delegate said actions to an attorney-in-fact. This possibility is likely to be more true where the TMP has been selected by the Internal Revenue Service pursuant to I.R.C. §6231(a)(7).^{4/}

The term legally significant document includes:

1). a settlement agreement entered into pursuant to I.R.C. §6224(c)(3), including a formal closing agreement^{5/} pursuant to I.R.C. §7121; and

2). an extension of the limitation period for assessment with respect to partnership items.

There may be circumstances where other documents may be deemed legally significant and, therefore, in the best interest of the Service to have the document executed by the TMP rather than his attorney-in-fact. Further, situations may arise where it is better to deal directly with the duly designated TMP rather than the attorney-in-fact. For example, required notices such as the notice of the beginning of an administrative proceeding and the notice of final partnership administrative adjustment should be mailed to the TMP. IRM § 4470. However, a copy of said notice should be mailed to the attorney-in-fact.

^{4/} It is possible that a TMP who is duly designated by the partnership under I.R.C. §6231(a)(7)(A) may be removed where there are serious concerns relative to special enforcement cases within the meaning of I.R.C. §6231(c) (e.g., the TMP is under criminal investigation). If the replacement is selected by the Service pursuant to I.R.C. §6231(a)(7)(B) said TMP may be viewed by some partners as actually having an interest adverse to their own.

^{5/} Rev.Proc. 68-16, Sec. 6-07-7(b), 1968-1 C.B. 770, 783, provides with respect to partnerships that:

(b) If the [closing] agreement is not signed by all partners, the signer or signers must confirm and explain their authority to bind the partnership. Appropriate evidence to that effect will be required.

With regard to the Form 2848 it is legally sufficient in its present form to enable a TMP to appoint an attorney-in-fact. However, due to the nature of the TEFRA proceedings, the proper way to complete the form is not readily apparent. The TMP should execute the power-of-attorney in his capacity as tax matters partner. The name and address of the entity should also be clearly set forth. Under the heading "Type of Tax" we recommend that the language read "TEFRA Partnership proceedings." Further under the heading "Federal Tax Form Number" we recommend that the language read "1065 and consequential adjustments."

We conclude that the Service should attempt to get legally significant documents signed by the TMP. With respect to all other dealings, and with respect to other documents which are to be executed, the Service may deal directly with the representative specified as the attorney-in-fact in the properly executed Form 2848. If you have any questions concerning this matter please contact R. Alan Lockyear, Attorney, at FTS 566-3477.

ROBERT P. RUWE

By:

Dan Henry Lee

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Chief, Branch No. 1

Tax Litigation Division

cc: Assistant Commissioner (Examination)